

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of

MM DOCKET NO. 93-42

MOONBEAM, INC.

File No. BPH-911115MG

GARY E. WILLSON

File No. BPH-911115MO

For a Construction Permit
 New FM Station on Channel 265A
 in Calistoga, California

TO: The Honorable Edward Luton
 Administrative Law Judge

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JUN 11 1993

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

OPPOSITION TO MOTION TO STRIKE

Gary E. Willson (Willson) files this Opposition to the Motion to Strike filed by Moonbeam, Inc. (Moonbeam). Moonbeam seeks to strike Exhibit 1 of Willson's Reply to Opposition to Petition to Enlarge Issues filed by Willson on May 20, 1993.

In the Petition to Enlarge, Willson seeks misrepresentation and lack of candor issues against Moonbeam based on the fact that Moonbeam's principal, Mary Constant, apparently never resided in Santa Rosa within the service area as she claimed; that Sonoma State University, where she claims she attended school, is not located in the service area as claimed; and that she was not an employee of James Warren & Sons as claimed. In her Opposition, Ms. Constant admits Sonoma State University not in Santa Rosa.

On the employment issue, Willson submitted the declarations of three individuals who all provide evidence that Mary Constant is not, and has not been, employed by James Warren & Sons. In opposition, Moonbeam submitted the declaration of the manager of the real estate office, who states only that Ms. Constant "has

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been considered as associate realtor." Although Ms. Constant provided a declaration. she said nothing about her "employment"

One is such a document. In any event, as an official agency document, there is little concern for bias.²

Finally, no new matter has been raised in contravention of Rule 1.45. This rule does not prohibit a party from presenting evidence in reply. It prohibits a party from raising new matters or issues in its reply. Willson has not done this. The exhibit at issue relates directly to Ms. Constant's employment at James

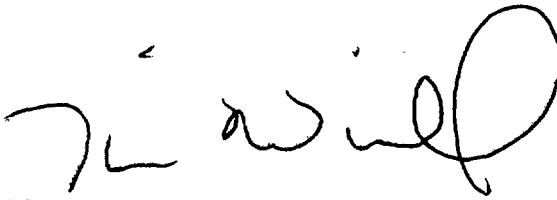
CERTIFICATE OF SERVICE

I, Tim Wineland, in the law offices of Gammon & Grange, hereby certify that I have sent, this 11th day of June 1993, by first-class, postage-prepaid, U.S. Mail, copies of the foregoing OPPOSITION TO MOTION TO STRIKE to the following:

* The Honorable Edward Luton
Administrative Law Judge
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